

THE LAW OF CLIMATE CHANGE: DOMESTIC & TRANSNATIONAL

Fall 2011

Monday & Wednesday

7:15-8:35 p.m.

Business 130

RPOS 399 Class #8790

Judge Eleanor Stein

518-265-2395

Estein@albanylaw.edu

Office hours on request

Syllabus

SUNYA

Fall 2011

COURSE OBJECTIVES:

This course is a general introduction to the body of domestic and transnational law that has developed and is developing daily to grapple with the crisis of catastrophic anthropogenic (human-caused) climate change. Our understanding of the impact of climate change on our world is expanding dramatically, and the law of climate change is changing fast as well. We will monitor ongoing developments in court decisions, congressional action, EPA decisions, and states. For example, the next global conference on climate change, looking for a replacement for the Kyoto Protocol which expires in 2012, will be held in Durban, South Africa toward the end of our semester. We will be keeping track of developments going into those negotiations: and we will be holding negotiations of our own in preparation.

The course will begin with a general overview of the science of climate change. During the first week of class we will be discussing Bill McKibben's recent book, *EAARTH*. We will have a talk at the beginning of the semester from Professor Matthias Vuille, of the Department of Atmospheric and Environmental studies, to explain current scientific thinking on climate.

We will then begin with an introduction to international environmental law, including the history of climate treaty law, up through discussion and some negotiation games focused on the forthcoming Durban Conference of Parties in December 2011.

Turning to domestic law, we will examine roles of the legislative, executive, and judicial branch, and the areas of law that govern two principal sources of greenhouse gases: transportation and energy generation. To look at these areas, we will read recent court decisions cases and the

decisions of the federal Environmental Protection Agency concerning environmental standards for automobiles and power plants. In the areas of electricity and natural gas – the sources for lighting and heating, we will examine current models for mitigation of and adaptation to climate change, on the global, national, regional and local level.

We will touch on the failure of congressional legislative action in 2009 and the introduction of a series of congressional bills this season to limit EPA authority over climate policy, and constrain the scientific inquiry. We will then turn our attention to what actions states and cities have taken to reduce fossil fuel use. Finally, we will explore the growing theories of climate justice, in the context of the human costs of fossil fuel, the international human right to a clean environment, the right of nations to survive as land masses and cultures, and the attempts to locate and enforce those rights in international and U.S. law.

THE WORK OF THE COURSE:

The course will be posted on Blackboard, and all assignments will be given and handed in electronically.

The work of this course will be carried out in several forms:

- Class meetings
- Negotiation of next steps toward a climate treaty (handing in negotiation notes)
- On-line litigation of a state case concerning wind power (2 written memos)
- A final examination. Students may choose either to do a final paper or final presentation instead of the examination. To choose the final paper or presentation option, students must select a topic and obtain my approval no later than October 12.

Your final grade will be based upon the following factors:

Class participation – 20%

Negotiation (practice and notes) and state case memos – 50%

Final paper/presentation/examination – 30%

Topics covered in the course include:

- Climate science
- The economics of fossil-fuel based industry, electricity generation, and transportation: what are the long-term costs?
- Environmental limitations vs. economic development. Global North/South conflicts; the relationship between the developed and the developing nations, and the growing climate crisis and its consequences
- Current changes in federal climate change policy: legislative, executive, regulatory, and judicial
- Regional, state and local mitigation and adaptation strategies
- Human rights and climate justice

The course and the syllabus are divided into an Introduction and four modules: Introduction to climate science; Module I-international law of climate change; Module II- Federal law concerning climate: litigation under the Clean Air Act (e.g. *Massachusetts v. EPA*), litigation

based upon common law causes of action (e.g. *Connecticut v. American Electric Power*), and federal statutory and regulatory initiatives (failure of Waxman-Markey, and pending HR 910; EPA decisions, including Denial of Reconsideration of Endangerment Finding); Module III, Regional, state and local sources of climate law (Energy generation, renewable resources, facility siting and energy efficiency, regional cap and trade); and Module IV, Human rights and climate justice (the Inuit petition, the Cochabamba principles). The materials in your packet follow are organized by module.

Required Materials:

McKibben, EAARTH : MAKING A LIFE ON A TOUGH NEW PLANET (St. Martins, Griffin 2010)

Gerrard, Ed., CLIMATE CHANGE AND U.S. LAW

Materials packet – available at the SUNYA bookstore

Supplemental Materials:

Web links and recent materials to be provided.

News articles and blogs, on a weekly basis, such as the Columbia Law School Climate Change Center, <http://www.law.columbia.edu/centers/climatechange> ; James Hansen’s new website, <http://www.columbia.edu/~mhs119/> ; *The New York Times*’s Green, Inc. blog or Andrew Revkin’s blog and articles; www.pewclimate.org, www.350.org, www.nrdc.org, www.nature.org. Please add to this list based on other sites or blogs you find useful and reliable.

INTRODUCTION TO THE COURSE AND TO CLIMATE CHANGE SCIENCE

Week One

Reading: McKibben, EAARTH, chapters 1 and 2.

Introduction to the course

Overview of climate science and law issues

Week Two

Reading: Gerrard, pp. 1-27

R. Socolow, “The Critical Role of Energy Efficiency in Mitigating Global Warming,” 10 Government, Law and Policy Journal 1 (2008)(packet), pp. 7-14.

Current developments in climate change science: Professor Matthias Vuille, Department of Environmental and Atmospheric Science, SUNY Albany

Introduction to Mitigation and Adaptation

MODULE I:

INTERNATIONAL LAW OF CLIMATE CHANGE:

Weeks Three through Five

Reading: Gerrard, pp. 31-35

United Nations Framework Convention on Climate Change (1992)

Kyoto Protocol to the United Nations Framework Convention on Climate Change (1998)

United Nations, Copenhagen Accord (December 18, 2009)

United Nations, Cancun Agreements (December 2010)

United Nations Ozone Secretariat, *A Success in the Making: The Montreal Protocol on Substances That Deplete the Ozone Layer* (2007)

In addition, students should begin to track <http://unfccc.org> the United Nations source for information about the Durban conference.

Team meeting to plan treaty negotiation.

Treaty Negotiation session. Hand in negotiation preparation outline.

MODULE II: U.S. FEDERAL LAW OF CLIMATE

The Clean Air Act

Weeks Six and Seven

Overview of federal climate law issues – US greenhouse gas emissions and Clean Air Act regulation

Reading: *Massachusetts v. EPA*, 549 U.S. 497 (2007)(in packet); John C. Dernbach, “U.S. Policy,” in Michael B. Gerrard, ed., *Global Climate Change and U.S. Law* (2007), pp. 61-65, 72-81; EPA “*Denial of the Petitions to Reconsider the Endangerment ...Findings*”, 75 Fed. Reg. 49556 (August 13, 2010), excerpts (in packet)

The public nuisance litigation

Week Eight

Reading: *American Electric Power v. Connecticut*, ___ U.S.___ (packet)

Week Nine

Congressional action and federal regulation

Reading: Ryan Lizza, “As the World Burns: How the Senate and the White House missed their best chance to deal with climate change,” (packet)

Federal regulation:

Reading: P. Schwartz and D. Randall, *An Abrupt Climate Change Scenario and Its Implications for United States National Security* (October 2003)(packet)

US Council on Environmental Quality, “Draft NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions” (packet)

Securities and Exchange Commission, “Commission Guidance Regarding Disclosure Related to Climate Change,” (packet)

MODULE III: REGIONAL, STATE AND LOCAL INITIATIVES

Weeks Ten through Twelve

Reading: Gerrard, Chapter 9; The Carbon Trading Game

James Hansen STORMS OF MY GRANDCHILDREN (2009), pp. 208-222 (packet)

Robert Socolow on Energy Efficiency, in *Journal of Government Law and Policy*, pp. 14-22(packet)

New York State Climate Action Council Executive Summary (packet)

California Law AB 32 (packet)

The Quixote Wind assignment

**MODULE IV:
CLIMATE CHANGE AND HUMAN RIGHTS**

Readings: Sheila Watt-Cloutier, Petition to the Inter American Commission on Human Rights Seeking Relief From Violations Resulting From Global Warming Caused by Acts and Omissions of the United States, Summary (December 7, 2005)(packet)

We Act for Environmental Justice, “Statement From Environmental Justice Forum on Climate Change,” June 6, 2008 (packet)

Association of Irrigated Residents v. California Air Resources Board, Excerpts (packet)

New York State Public Service Law Article X, Excerpts